

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Smith Broadcasting of Santa Barbara, LP)	
Licensee of Station KEYT(AM))	File No. EB-02-LA-143
Santa Barbara, California)	NAL/Acct. No. 200232900007
Facility ID # 3156)	FRN 0001650019
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 26, 2002

By the District Director, Los Angeles Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Smith Broadcasting of Santa Barbara, LP, (Smith), licensee of station KEYT(AM), Santa Barbara, California, apparently willfully violated Section 11.35(a) of the Commission's Rules ("Rules")¹ by failing to have operational Emergency Alert System ("EAS") equipment. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act")², that Smith is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. On February 13, 2002, Agents of the Los Angeles Office inspected KEYT(AM). At the time of inspection, the EAS equipment was present but not operational. The chief engineer stated that the EAS equipment had very recently failed as a result of a power surge that caused it to lose all commands. At the time of inspection, the station log revealed no EAS activity since December 30, 2001. Specifically, the log indicated no weekly tests issued or received and no retransmission of the required monthly tests during the period from December 30, 2001 through February 13, 2002. Further, there was no entry in the station log indicating when the EAS equipment went out of service, the nature of the problem, what steps were being taken to repair the equipment or when the equipment would be back in service.

¹ 47 C.F.R. § 11.35(a).

² 47 U.S.C. § 503(b).

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴

4. The Rules provide that every AM and FM broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁵ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.⁶ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.⁷

5. Section 11.35(a) of the Rules states that "[b]roadcast stations...are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation." Based on the evidence before us, we find that on February 13, 2002, Smith willfully violated Section 11.35(a) of the Commission's Rules by failing to have EAS equipment operational at station KEYT(AM) so that the monitoring and transmitting functions were available.

6. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁸ and Section 1.80 of the Commissions Rules,⁹ for EAS equipment not installed or operational is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,¹⁰ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses,

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. §§ 11.11 and 11.41.

⁶ 47 C.F.R. §§ 11.1 and 11.21.

⁷ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 C.F.R. § 1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(D).

ability to pay, and other such matters as justice may require. Application of the base amount to the captioned Smith Broadcasting of Santa Barbara, LP station violation results in a base forfeiture amount of \$8,000. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, an \$8,000 forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹¹ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Smith Broadcasting of Santa Barbara, LP is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for violation of Section 11.35(a) of the Rules, representing a total forfeiture of \$8,000.¹²

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules¹³ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Smith Broadcasting of Santa Barbara, LP, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced in the caption.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

13. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35(a).

¹³ 47 C.F.R. § 1.80.

¹⁴ See 47 C.F.R. § 1.1914.

by Certified Mail # 7001 2510 0001 5861 0193, Return Receipt Requested, to Smith Broadcasting of Santa Barbara, LP, 730 Miramonte Drive, Santa Barbara, California 93102.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director, Los Angeles Office